Mandamus 19-583-
ordered Judge Davis
June 23 74

SUPREME COURT OF THE UNITED STATES.

No. 14—ORIGINAL.

Judge Field Dissents

EX PARTE: JAMES S. ROBINSON, PETITIONER.

RETURN TO RULE.—FILED APRIL 16, 1874.

1 EX PARTE: JAMES S. ROBINSON, PETITIONER. } Original, No. 14.

To the Supreme Court of the United States:

The judge of the district court of the United States for the western district of Arkansas, responding to a rule served upon him March 23d, 1874, requiring him to show cause why a writ of mandamus should not issue to him, directing him to revoke his order of July 28, 1873, disbarring petitioner, and to restore him to the roll of attorneys practicing in said court, respectfully shows:

1st. That at the time respondent made said order he was holding a session of the district court of the United States for the western district of Arkansas, presiding as judge thereof. Said order was a judgment of a court in regard to a matter within the scope of its jurisdiction, made in the exercise of a sound judicial discretion, and having for its object the maintaining of the dignity of the court by punishing petitioner for a gross contempt of court committed by him in open court, and tending to impair the respect due its authority. That said
2 order was not an arbitrary or a despotic exercise of power, nor was it inspired by caprice, passion, prejudice, or personal hostility.

2d. That on the 16th day of July, A. D. 1873, an order was made by the district court of the United States for the western district of Arkansas, upon information received from the grand jury, then in attendance upon said court, requiring petitioner to show cause why he should not be punished as for a contempt for an alleged obstruction of public justice, and that afterwards, on the 18th of July, inst., petitioner contemptuously and defiantly refused to respond thereto, and has since neglected and refused, and still continues to refuse, to respond thereto. That after petitioner refused to respond to said rule, the court made the said order of July 20th, A. D. 1873, disbarring petitioner.

3d. That on the 16th day of July, A. D. 1873, an order was made by the district court of the United States for the western district of Arkansas, upon information received from the grand jury then in attendance upon said court, to show cause why he should not be punished as for a

contempt, and that afterwards, on the 18th of July, inst., petitioner being present in open court, was ordered to respond thereto in writing, which petitioner in open court, in a grossly contemptuous, contumacious, and defiant manner refused to do, and has since neglected & refused & still refuses so to do. Whereupon for his contempt committed in open court, as well as for his contempt committed in refusing to respond to the rule, it was ordered that petitioner be disbarred from further practice in said court as an attorney, counsellor, & solicitor.

4th. Respondent, further answering, admits that petitioner was duly enrolled as an attorney and counsellor at law, as in said petition alleged, but denies that petitioner has always behaved himself well in his office, respectfully to the courts, faithfully to his clients, and uprightly to his fellow-citizens, and avers that the records of the courts, before which petitioner has practiced, do not sustain him in the assertion. Respondent shows that petitioner repeatedly conducted himself before the court over which respondent presided in an exceedingly irritable and disrespectful manner; and that especially on the 5th day of January, A. D. 1872, petitioner in open court was guilty of a gross contempt, threatening and attempting to intimidate the court in the discharge of its duties, as appears from the records of said court.

Respondent shows at the May term, A. D. 1873, of said court, the grand jury, then in attendance upon said court, represented to him that there was reason to believe that petitioner and other officers of the court were trying to impede its process. They afterwards filed a written statement, which respondent hastily examined, and announced a rule, intending to see that it was properly entered, but the same was entered and copies issued for service by the deputy clerk before the adjournment of court, and served on petitioner on the same day. Two days afterwards petitioner filed the written response of Deputy Marshal Sheldon, prepared by him, and appears to have had no difficulty in discovering "that the statement of the grand jury charged Sheldon with a flagrant contempt of court." Petitioner having indicated that he had no other morning business, and not offering to answer himself, respondent remarked, "There is a rule also against you, Mr. Robinson," to which petitioner responded in an angry and disrespectful tone & manner, "Yes, sir, I know it, and am here to respond. I don't know what there is for me to answer. It says I saw Cyrus R. Stephenson. I do not know what the grand jury has to do with my private business in my law-office," and was proceeding to reflect upon the action of the grand jury, when respondent, intending to require petitioner to conform to the usual practice, as well as to avoid any unseemly conduct in court, remarked, "You must answer in writing, Mr. Robinson." Whereupon petitioner rejoined in an exceedingly disrespectful tone, "The rule itself does not require me to respond in writing." Respondent, turning to the clerk, said, "It should have done so; you will amend the order if it does not, Mr. Clerk." To which, as respondent recalls it, petitioner declined to answer "until it was amended." Respondent then made the order, "Well, I will make the order for you to respond in writing now. Mr. Clerk, you will enter an order requiring Mr. Robinson to answer the rule in writing." Upon which petitioner, turning from the court, in an exceedingly disrespectful & defiant tone and manner, said, "I shall answer nothing," and acted as though he were about to sit down. Respondent, regarding both the words, "I shall answer nothing," and the tone in which they were uttered as not only in themselves grossly and intentionally

disrespectful, but also as the expression of an intention to disobey and treat with contempt an order of the court, and believing then, as he still believes, that petitioner intended to intimidate him in the discharge of his duties, in which belief he is sustained by a second report made by the grand jury, felt it to be due to himself and to the office he held, to inflict summary and severe punishment, which he did, by ordering the clerk to strike Mr. Robinson's name from the roll of attorneys, and the marshal to remove Mr. Robinson from the bar. The erroneous impression that petitioner "said he would not answer anything" arises from a mistake of the clerk in making an entry, which entry was marked "error" by order of the court before the record was signed.

Respondent's recollection agrees precisely with the statement of petitioner that he uttered the words, "I shall answer nothing" in the connection and at the time stated.

7 That the tone in which they were uttered was grossly contemptuous, contumacious, and defiant, as set forth in the order disbarring him, and as affirmed by respondent, the petitioner denies, but admits on page 30 of his printed argument, filed in support of his appeal at the October term of this court, and in his motion filed Aug. 1, 1873, which is part of the record, that his manner was "earnest," owing "to the indignity, that the said Robinson believed, at the time was offered by the court by him, in the presence of the bar and the public," and in his printed argument above referred to, he says: "I look upon it now, as I did then, as an unprovoked insult, without right, intended by the court."

What was the "indignity," the "unprovoked insult," according to petitioner's own showing, both in the motion and the argument before referred to? It was this: Respondent had, in an excited "manner, turned to the clerk, saying at the time, Mr. Clerk, enter an order requiring Mr.

8 Robinson to answer the rule in writing," when Mr. Robinson, who was standing at the time on his feet, as he had been from the time he had commenced insisting that there was nothing in the rule to answer, starting to walk across the front of the bar, responded by saying, "I shall answer nothing."

The indignity, then, consisted in requiring petitioner "to answer the rule in writing;" in other words, in requiring him to conform to the established practice of the court—a practice well known to the petitioner, as shown—

1st. By the fact appearing on the record that he had already filed a written answer for Sheldon, one of the two others included with petitioner in the order to show cause; and—

2nd. By the fact that petitioner has recently testified that he filed Sheldon's answer in writing "because he was an officer of the court."

The "indignity," or "insult," consisted in requiring that from Mr. Robinson, an officer of the court, which, according to his own showing, was right and proper for Sheldon, another officer of the court.

9 The petitioner avers that the slightest hesitation on the part of respondent in furnishing his refusal to answer would have enabled the petitioner to finish the sentence as he had intended, by adding to the words "I shall answer nothing" the words "until the order to answer the rule in writing shall be served upon me."

Respondent, denying this averment, affirms that petitioner had plainly and perceptibly finished speaking when he had uttered the words, "I shall answer nothing;" and, though it is obviously impossible for respondent to prove that petitioner did not intend to utter the additional words as above alleged, and by them to convey a meaning totally differ-

ent from that imported by the words he actually used, the facts of the case all go to show that the allegation is not true.

The order to strike from the rolls was first announced on the 18th July.

Four days afterwards, on the 22d, petitioner filed a motion to vacate and set aside the order to strike his name from the roll of attorneys.

On the 26th July he filed an amended motion, setting forth additional reasons why said order should he vacated.

10 Nothing is said in either of these motions of any intention on the part of petitioner to add words of qualification to the expression, "I will answer nothing."

The first intimation of such an intention appears in an additional motion to vacate the order disbarring petitioner, filed on the 1st August, fourteen days after the contumacious words were uttered.

In that part of the motion embodied in the "10th assignment" of reasons for vacating said order, petitioner describes himself as stating to the court, when informed that he also must respond to the rule that had been served upon him, "that there was nothing in the rule which required him to make answer thereto;" and, again, that there was no charge in said rule "which he could answer;" and afterwards, when informed that the answer must be in writing, and when he heard respondent give the clerk an order to that effect, he said, "I will answer nothing," a declaration strictly consistent with his previous

11 remark that there was nothing to answer. But he proceeds to declare, for the first time, a fortnight after the transaction, that what he meant to say was, "I shall answer nothing until the order to answer the rule in writing is served upon me."

If it had been true, as alleged, that the petitioner really did not mean to refuse to answer, and actually meant to utter words widely different from those which he confessedly did utter, it would have been very easy to have come forward at once and said so.

If he had made a suitable apology in open court, or had in any proper manner purged himself from his contempt, respondent would have promptly rescinded the disbarring order.

But the only attempt at apology was that contained in the allegation above named, made fourteen days after the offense, of an intention to qualify his refusal by additional words, which at best would have expressed a sentence not particularly respectful, and which allegation was coupled, it is true, with a disclaimer of any intention to commit a contempt, but also with the averment that the court had offered him

12 an indignity, and that "a bitter state of personal animosity existed between the said Robinson and the court for a long time past," an averment which, while doubtless describing truly the feelings of the petitioner, is wholly destitute of foundation so far as it attributes such animosity to respondent, as indeed is shown on page 30 of petitioner's printed argument, before referred to as filed at the October term of this court, in which he says, "There never has been a quarrel or words of ill-feeling between the judge and the appellant, only those that are specified in the record."

Not only did the motion filed the 1st August neutralize its disclaimer of any intention to commit a contempt by the insinuation, above specified, that the court was influenced by bitter personal animosity

13 and had offered petitioner an indignity, but it also proceeded on the assumption that all of respondent's rulings in the premises, and in relation to various other matters previously occurring, were illegal and void.

Respondent denies that he acted in an "excited" manner, or that his action in the premises was, as alleged by the petitioner, "hasty, ill-advised, oppressive, arbitrary, or an illegal exercise of his judicial discretion, not called for in the case before him."

It was not hasty or ill-advised, as the records of the court will show that petitioner, by his contemptuous and defiant conduct, had already taught respondent the necessity of being at all times prepared to check any attempt on the part of the petitioner to presume too far upon the forbearance and consideration of the court, and to a certain extent to anticipate the conduct of the petitioner.

14 It was neither oppressive, nor arbitrary, nor an illegal exercise of judicial discretion, as it was strictly in accordance with precedents long since established.

In Parker's case (1 Vent., 331) it was held that the speaking contemptuous words was a good cause of suspension from practice, and a submission was ordered to him that had received the affront in open court before the attorney could be restored.

In Stephens vs. Hill (10 M. & W., 28) it was held that an attorney should not be permitted to remain on the rolls who had induced a witness subpœnaed by the opposite party to absent himself.

15 In re Holems, (12 Jurist, 657,) where a master had reported that an attorney of the court had failed to answer matters contained in interrogatories, Lord Denman said: "The court may in such a case as this strike the attorney off of the roll."

In the present case, it appears, by petitioner's own statement of the facts, that he was present in court and heard the order requiring him to respond in writing; that he had notice thereof; that he appeared thereto, and undertook to dictate the terms upon which he would answer in writing, and refused to respond except upon terms which it did not rest with him to impose; that he still neglects and refuses to respond to said order, and is at the present time defying & in contempt of court.

Respondent denies that petitioner has had no opportunity afforded him for explanation & defence, and avers that petitioner has
16 availed himself of that opportunity by filing several motions to vacate and set aside the order. That one or more of the motions contained false statements, were exceedingly disrespectful, and were in themselves gross contempts of court. Respondent, after carefully and conscientiously considering the motions in the shape they were made, deemed it to be his duty to & did overrule them.

Respondent is conscious and deeply regrets that he has erred in his course towards petitioner, but that error has consisted in excessive forbearance. He firmly believes that, had he inflicted proper punishment upon petitioner for his previous disrespectful conduct, that this unfortunate, and, by respondent, deeply regretted, occurrence, would not have happened.

In conclusion, the respondent, confident that under the circumstances the prayer of the petitioner for a mandamus cannot be granted,
17 would have been satisfied to submit this case, upon petitioner's own showing, without comment or explanation, had he not earnestly desired, by a full statement of the facts, to repel the imputation having treated petitioner with undue rigor or of having been unwilling to restore him to the rolls whenever he thought proper to purge himself

from his contempt in a manner consistent with the respect due to the court over which respondent has the honor to preside.

Respectfully submitted.

WM. STORY,
Judge of the District Court of the United States for the Western District of Arkansas.

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SUPREME COURT OF THE UNITED STATES.

No. 14—ORIGINAL.

EX PARTE: IN THE MATTER OF JAMES S. ROBINSON, PETITIONER.

PETITION FOR MANDAMUS.—FILED MARCH 9, 1871.

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1 In the Supreme Court of the United States.

EX PARTE: JAMES S. ROBINSON, PRAYING FOR A MANDAMUS.

And now, into this honorable court, by his counsel, Thomas J. Durant and Charles W. Horner, comes James S. Robinson, attorney and counsellor at law, of Fort Smith, Arkansas, and in accordance with notice previously given, as seen by the return of said notice, herewith filed, now respectfully asks leave of the court to file a petition for a mandamus to the honorable William Story, judge of the United States district court for the western district of Arkansas, and prays the court to direct a rule to be issued to the said honorable William Story, to show cause, on a day to be fixed by the court, why a peremptory writ of mandamus should not issue as prayed for.

DURANT & HORNER,
For Petitioner.

MARCH 6, 1874.

(Indorsed:) Sup. Court U. S., 1873, October term. No. 14. Original. United States Supreme Court. Ex parte: James S. Robinson, praying for a mandamus. Motion for an order to show cause. Durant & Horner for petitioner. Filed 9th March, 1874.

2 In the Supreme Court of the United States, October term, 1873.

EX PARTE: JAMES S. ROBINSON, PRAYING FOR a writ of mandamus to the Hon. William Story, judge.

To the honorable William Story, judge of the district court of the United States for the western district of Arkansas:

You will please take notice that on Friday, the sixth day of March, A. D. 1874, the first rule-day in the hon. U. S. Supreme Court occurring after this date, we shall move the said court for a rule and order di-

recting you to revoke your order of July 28, 1873, disbarring James S. Robinson, the relator, and to restore him to the rolls of attorneys & counsellors, practising in the said U. S. district court for the western district Arkansas, and replace him in all his legal right as an attorney at law of said court.

Respectfully,

DURANT & HORNER,
Att'ys for James L. Robinson.

WASHINGTON, D. C., *January* 30, 1874.

3 On this 21st day of February, 1874, personally appeared John S. Goss before me, the subscriber, a duly commissioned and qualified notary public, and makes oath that he delivered the original notice, of which the within is a true copy, to the Hon. William Story, judge of the district court of the United States for the western district of Arkansas, personally this day.

JOHN S. GOSS.

Sworn to & subscribed this 21st day of February, A. D. 1874.
[SEAL.] C. P. SWIFT,
Notary Public.

(Indorsed:) No. 14. Original. 1873. October, 1873. U. S. Supreme Court. Ex parte: James S. Robinson, praying for a mandamus. Copy of notice on which to make return. Filed 9th March, 1874.

4 Supreme Court of the United States.

EX PARTE: IN THE MATTER OF JAMES S. ROBINSON, PETITIONER. } No. 14.—Original.

To the honorable the judges of the Supreme Court of the United States:

The petition of James S. Robinson, a citizen of the State of Arkansas, and domiciled at Fort Smith in that State, respectfully represents:

That prior to January 1st, 1872, for several years, as well as before and after that date, petitioner was an attorney & counsellor at law, having been regularly and legally admitted to practice in all the courts of the State of Arkansas, as well in the district & circuit courts of the United States for said State, and had always behaved him-
5 self well in his office, respectfully to the courts, faithfully to his clients, and uprightly to his fellow-citizens.

That, on the 16th of July, 1873, at Fort Smith, State of Arkansas, he was attending as an attorney & counsellor at law, the session of the district court of the United States for the western district of Arkansas, the honorable William Story presiding, when petitioner and two other persons, not lawyers, were ruled to show cause on July 16th, 1873, why they should not be punished for a contempt.

That this rule upon petitioner was based, as petitioner is informed and believes, upon a representation made to the U. S. district court by the grand jury to the effect that they had caused to be summoned before them a certain witness, who, before he had been served by the U. S. marshal, and "after seeing" petitioner, who was "the attorney in the Nash case," had "very suddenly absented himself."

That when the rule to show cause came up for trial, as against petitioner, he proceeded orally to make his return to the rule, which, being objected to by the court, and an answer in writing required, pe-

6 titioner urged that he had not been ruled to make his return in writing, and said that he would not answer anything, and he was thereupon stricken from the rolls of the practicing attorneys of the said court, because his answer was "said in a contempt'ous and Contumelious manner." See record, p. 3.

On July 22, 1873, petitioner, through another attorney, moved to vacate this judgment, and on July 26th, 1873, additional grounds were filed.

On July 28, 1873, without disposing of the motion to vacate, the judge proceeded to enter a new judgment, nunc pro tunc, for that which was rendered on the 18th, in which petitioner is again disbarred, and a new form given to the judgment, which still stands in full force and virtue against petitioner, from which no appeal or writ of error lies, and which works in every way against him an irreparable injury. Petitioner further shows that the original judgment disbarring him, of July 18, 1873, was cancelled and erased for error on the minutes of the

7 court; but he is ignorant of the date of the cancellation, and never heard of it till after the decree of July 28, 1873, nunc pro tunc, was rendered.

Petitioner further shows that he was the sole attorney in the Nash case, alluded to by the grand jury; and that whilst the deputy marshall of the United States actually had in his possession a subpœna ad testificandum for C. R. Stephenson, a fact which was unknown to your petitioner, petitioner did have a professional consultation with him, and, after this consultation, Stephenson did "very suddenly absent himself;" but petitioner avers that his advice to his client was the very best and most conscientious he could give him; that it was honest, professional, and proper; and did not tend in the slightest degree to impair or obstruct the administration of public justice, or to cause its process to be in any way evaded, resisted, or disobeyed; nor did it in any way bring about, or even tend to produce, the sudden departure of the witness from the jurisdiction of the court and the presence of the grand jury; and he repels, with all the power of his professional reputa-

8 tion, the insinuation of the grand jury that he was the cause of this sudden departure, or in any way ministering to it, if such insinuation be contained in, and can be properly deduced from, their report to the court; that in the consultation with Stephenson there was no allusion to the Nash case or the grand jury, but to a totally different matter.

Petitioner further shows that no disrespect to the court in its presence was ever intended by him on July 18th, 1873; that he was somewhat surprised at the judge requiring him to make his return in writing, and refusing to receive his oral answer, but denies all intention to commit contempt of court.

Petitioner avers that the slightest hesitation or delay on the part of the judge would have enabled petitioner to make the court to hear the conclusion of the sentence which was then and there intended to be made "until a copy of the rule had been served upon him to make his return in writing;" and with a little patience, forbearance, and kind feeling, universally admitted to prevail over the whole country

9 between the bench and the bar, the judge might, then and there, have readily avoided all seeming conflict, and maintained, in its perfection, the dignity of the court.

Petitioner shows that the action thus had by the judge of the United States court for the western district of Arkansas was hasty, ill-advised, oppressive, arbitrary, and an illegal exercise of his judicial discretion,

not called for in the case before him, and not made final by any statute; that even if guilty of an intentional disrespect to the said judge, which has been heretofore and will always be denied by petitioner, still his punishment is, on the face of the papers, excessive; and in view of his age, social condition, and the dependence of himself and family on his professional exertions to support life, bordering on the cruel, coming down upon him without warning, unexpected, unprepared, unforeseen, and without the forms required by an enlightened jurisprudence to precede the infliction of such a penalty, to wit, notice of the charges made against him, and opportunity afforded him for explanation and defense; all of which forms were totally omitted in his case.

Petitioner further shows that his motion to vacate the judgment of July 18th, 1873, was renewed on August 1st, 1873, with additional
10 reasons, among them an express denial on oath of any intentional disrespect to the court and judge; but the motion was overruled on August 25th, 1873, and petitioner is thus left without any known legal remedy for the great wrong and injury to which he has been subjected, and for the loss of property upon him inflicted in depriving him of his office, but a resort to this honorable court for a writ of mandamus to compel the judge of the district court of the United States for the western district of Arkansas to revoke his order of July 18th, 1873, disbarring petitioner, to restore petitioner to the rolls of attorneys and counsellors practising in said court, and to perform all other acts necessary to the complete enjoyment and exercise by petitioner of his office as an attorney and counsellor at law, and of all the legal rights, immunities, honors, and emoluments belonging thereto.

Petitioner further shows that after the original entry of judgment disbarring petitioner, on the 18th July, 1873, had been entered, it was illegal to cancel it and enter another judgment with modifications, additions, and alterations, both of form and substance, some ten days afterwards, to wit, on July 28th, 1873, without any notice or hearing vouchsafed to the party in interest.

11 Petitioner makes part here of the certified copy of the proceedings hereinbefore referred to of the said district court of the United States for the western district of Arkansas, on file in this honorable court, under 596 of the docket, October term, 1873.

Petitioner further shows that since the judgment disbarring him was rendered, the witness, C. R. Stephenson, has filed under oath his return to the rule upon him for a contempt, under which all proceedings against him have been dismissed; and a true copy of his said return under oath is made a part of this petition, and lettered R.

Wherefore petitioner prays, the premises and annexed affidavit considered, your honors may please to order a rule nisi to be issued, directed to the honorable William Story, judge of the district court of the United States for the western district of Arkansas, and commanding him, on a day to be fixed by your honors, to show cause why a writ of mandamus should not issue to him, directing him peremptorily to revoke his order of July 28th, 1873, disbarring your petitioner, and to restore petitioner to the rolls of the attorneys and counsellors practising in said court, and to replace petitioner in the enjoyment of all his legal rights as an attorney and counsellor at law in the said district court of the United
12 States as they existed on July 16th, 1873; and that after due proceedings had, your honors may order a peremptory mandamus to be issued, commanding the said judge to revoke his order disbarring petitioner, and to restore petitioner to the rolls of attorneys practising in said United States court, and replace him in all his legal rights as

an attorney of said court, and to perform all the other acts required of him by law in the premises; and he prays for all further general relief.

JAMES S. ROBINSON.

DURANT & HORNOR, *Attorneys.*

DISTRICT OF COLUMBIA, *to wit:*

James S. Robinson, to foregoing petitioner, being duly sworn, deposes and says that all the facts and allegations in the foregoing petition are true.

Before me this 2d day of March, A. D. 1874.

[SEAL.]

F. W. JONES,
Notary Public of the District of Columbia.

(Endorsed:) Original, No. 14, 1873, October term. U. S. Supreme Court. Ex parte: James S. Robinson, praying for a mandamus. Petition. Durant & Hornor, attorneys for petitioners. Filed 9th March, 1874.

13 *Response to rule for contempt.—Order of attachment.*

In the district court of the United States for the western district of Arkansas.

UNITED STATES
against
C. R. STEPHENSON.

Now comes the defendant, C. R. Stephenson, and makes known to the court, in response to the rule against him for contempt, and also to the order of attachment, for a failure to answer said rule, issued at the present term of this court:

First. That so far as the effort that was made by the grand jury to have a subpœna served upon respondent, July 15, 1873, through Deputy Marshal Sheldon, is concerned, he knows nothing, and that he did not see Sheldon on that day, did not know at the time that he had a subpœna for him, and had no knowledge whatever that Sheldon was going to Van Buren.

Second. The respondent states that if there was any evidence
14 produced before the grand jury at the present term of the court that he knew a subpœna was out for him, and came here on that account, said evidence is wholly untrue. And respondent further states that he received no information from J. S. Robinson, att'y in the Nash case, that a subpœna was out for him.

Third. And further answering the order of attachment made on the 16th day of August, 1873, against this respondent, he states that said order, or at least the copy served upon him, erroneously sets forth that the rule made against him on the 16th day of July, 1873, required him to show cause "forthwith" why he should not be punished as for a contempt.

Respondent states that no time was specified in said rule for him to respond, and he supposed a reasonable time, or until the next term of the court, would be allowed him. He further states that, owing to the excitement over the Nash case at the time, he thought it best not
15 to put in his response until absolutely necessary, not knowing but what, if punished for contempt, he might be confined in jail an indefinite period without bail.

And he further states that he was informed from sources he deemed reliable that he would be arrested for alleged slanders against some of the officers of this court, in connection with said Nash case, and this was an additional reason for his absence and delay in responding to said rule.

Respondent further states that, so soon as he had information that an attachment had been ordered against him, he came at once to this place for the purpose of answering the above-named rule and order of attachment, & purging himself of said alleged contempt.

Respondent further states that he never at any time had any intention of committing a contempt of this honorable court.

Having fully answered, respondent prays the court to dismiss
16 the rule and order of attachment and order discharging him as a deputy marshal until he should fully respond to said rule and for all proper relief.

C. R. STEPHENSON.

THO. H. BARNES,
Att'y for Respondent.

Sworn to and subscribed before me this 1st day of September, 1873
JAS. O. CHURCHILL,
U. S. Commissioner.

Which is indorsed as follows: United States vs. C. R. Stephenson. Response to rule for contempt, &c. Filed Sept. 2d, 1873. Jas. O. Churchill, clerk.

I, James O. Churchill, clerk of the district court of the United States for the western district of Arkansas, hereby certify that the fore-
17 going is a true and correct copy of the original "response to rule" in the above-entitled cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said court of Fort Smith, in said district, this 20th day or October, A. D. 1873.

[SEAL.] JAS. O. CHURCHILL, *Clerk.*

(Indorsed:) Sup. Court U. S., 1873, Octo. term. Original action, No. 14. Ex parte: Jas. S. Robinson, petitioner. Defendant's return to rule for contempt. Exhibit R. Filed 9 March, 1874.

18 Supreme Court of the United States, October term, 1873.

EX PARTE: IN THE MATTER OF JAMES S. ROBINSON, PETITIONER. } 14.—Original.

On consideration of the petition filed in this cause by Mr. T. J. Durant, of counsel for the petitioner, it is now here ordered by the court that a rule issue to the judge of the district court of the United States for the western district of Arkansas, requiring him to show cause on or before the tenth day of April, A. D. 1874, why a writ of mandamus should not issue to him directing him to revoke his order of July 28, 1873, disbarring petitioner, and to restore him to the roll of attorneys and counsellors practicing in said court.

9th March, 1874.

I, D. W. Middleton, clerk of the Supreme Court of the United States, do hereby certify that the foregoing is a true copy of the order of
19 said Supreme Court, made in the case of Ex parte: Jas. S. Robin-

son, as the same remains on the official records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this tenth day of March, A. D. 1874.

[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court U. S.

Served a true copy of the above order upon Hon. William Story, judge of the district court of the United States for the western district of Arkansas, personally, on this 23rd day of March, 1874; and at the same time I produced and exhibited to him the above original.

JOHN S. GOSS.

Sworn to and subscribed before me this 23rd day of March, 1874.

[SEAL.] C. P. SWIFT,
Notary Public.

(Indorsed:) Sup. Court U. S. 1873, Octo. term. No. 14, original. Ex parte: James S. Robinson, petitioner. Service of rule. Filed 1st April, 1874.

Supreme Court of the U. S.

EXPARTE, JAMES S. ROBINSON.

ARGUMENT FOR APPELLANT.

JAMES S. ROBINSON,
for Appellant.

S. & R. O. Polkinhorn, Printers.

Supreme Court of the U. S.

OCTOBER TERM, 1873.

EXPARTE, JAMES S. ROBINSON.

May it please the court. I am not an enrolled and practising attorney of this court, though, doubtless, entitled to be, upon application; but I appear in this case in pursuance of that distinguished constitutional privilege that gives to every citizen of the United States the right to be heard in all the courts of the country to assert his rights, or defend against what he may conceive to be wrong, in person or by counsel, and in thus appearing in this court, as the party in this exparte proceeding, where, of necessity, there must be much feeling between the appellant and the judge of the court below, yet, allow me to say, that I will keep within the record, for no matter what my views personally may be of any judge, or how widely we may differ in opinion, it is my duty as a lawyer to sink all this in my respect for the position, and treat them with courtesy, dignity and high esteem, while presiding upon the bench in the administration of the principles of justice. Therefore, should I say anything that would tend in the least, to indicate personal feeling, attribute it to my zeal, and not to any intention to do so, for it would be folly and base falsehood in me to assert to this august tribunal,

the most learned in the world, that I have no feeling in this matter. When a hard earned reputation has been taken from me; the pride of my early life; the ambition of my growing years; the solace, stay, and support of my declining days; and upon which a wife and seven children are dependant for a support, would be more than human.

I will proceed to state the case as presented in the record.

STATEMENT.

On the 16th day of July, 1873, the grand jury for the Western District of Arkansas, presented to the presiding judge, signed by their foreman, the statement found upon the first page of the record, upon which the court entered up the order of the same date, requiring R. H. Sheldon, Cyrus R. Stephenson, and James S. Robinson, to show cause why they should not be punished as for a contempt. On the 18th of July, 1873, the appellant was stricken from the roll, in a moment of time, for an alleged contempt, in refusing to answer the rule in open court, when he had answered the rule in open court orally, as he was not required to answer in writing. The amended order of the court, spread upon the record on the 28th day of July, 1873, ten days after the appellant was stricken from the roll, and requiring James S. Robinson, and others, to show cause *forthwith*, and in *writing*, if any they could, why they should not be punished as for a contempt, was not served upon the appellant in the court below, as appears of record, and to which he would have answered had an opportunity been afforded him.

This case originated, as appears from the record, from the statement presented by the foreman of the grand jury to the court below, on the 16th July, 1873, in which

several parties are alluded to, one of whom is the appellant, and to this statement, as it is the foundation upon which all this proceeding rests, I invite special attention.

1st. It is stated that R. H. Sheldon was a deputy marshal, and as such entrusted with a subpœana to serve upon one Cyrus R. Stephenson, and by strong intimation that the subpœana was returned non est, when in fact he could have served it, thereby giving the court to understand that as an officer of the court, charged with the faithful execution of its process, he was guilty of a gross dereliction of duty. The grand jury had a right to make this charge, and based upon this, the court had the right to make the order against Sheldon, to show cause why he should not be punished as for a contempt. He was an officer of the court, entrusted with the service of its process, and had he by any evasive conduct failed to serve the process, it was the duty of the court to punish him, for the dignity of the courts cannot be maintained unless the officers, who are entrusted with the service of their process, faithfully discharge their duty, and upon failure, that the courts promptly and summarily punish them.

2d. In the statement of the grand jury, the words "certain witness," "said witness," occur in relation to Stephenson. That the grand jury should make use of this language, is what might be expected; but the statement they made, and the order they ask, shows that he was not a witness. They wanted to make him such, but failed. Judges and lawyers when they use the word *witness*, do not mean a person who knows a great deal about a transaction that may be in litigation, and whose information might be very beneficial to either of the parties litigant, but they mean a person that the legal process intended for the purpose has been served upon, and thereby made them in the legal sense a *wit-*

ness, so that upon failure to attend as such, the compulsory process of the law may be used to force them Now, in this sense was Stephenson a witness. Was he in contempt for not obeying process that was not served upon him? Had the court any control over him, or any right to make any order in relation to him, until it had jurisdiction of his person in some way? Yet the court, upon this statement, ordered Stephenson to show cause why he should not be punished as for a contempt. What contempt? What had he done? What law had he violated? I answer none. Surely this was error.

3d. The statement of the grand jury recites; "we have also learned from evidence produced before us, that Mr. Stephenson knew that a subpœna was out for him, and that he came here for that purpose, but after seeing the attorney, J. S. Robinson, in the Nash case, very suddenly absented himself." This is all that is said about the appellant. Is there any contempt manifest here? Upon this there is an order of the court that James S. Robinson show cause why he should not be punished as for a contempt. In what did the contempt consist? Was it in the hearing of the court; in the presence of the court; to the disturbance of the court, or any of its co-ordinate branches? I am now, as I was then, unable to tell. I am now, as then, unconscious of any contempt to grand jury or court, upon which this order should have been made; and I now submit to this learned tribunal, taking it in the strongest sense against the appellant, that all is true as stated, is there any contempt in the matter? What is it? 1st. Stephenson saw the appellant. The appellant is a public man and a lawyer, and the public or any individual has the right to see him. He keeps a law office in the city of Fort Smith, Arkansas, and it is a public place, where he invites all persons who may have

public or professional business with him to come. There I saw Stephenson upon private business, having nothing whatever to do with the court. And Stephenson in his answer to this order swears, that he had not one word with me in relation to his being a witness before that grand jury. 2d. His testimony is, "the respondent states that if there was any evidence produced before the grand jury, at the present term of the court, that he knew a subpœna was out for him, and came here on that account, said evidence is wholly untrue; and respondent further states, that he received no information from J. S. Robinson, attorney in the Nash case, that a subpœna was out for him." (The response of Stephenson is lengthy, but that the court may know that there is no imposition, the duly certified copy of his response will be placed in the possession of the clerk of the Supreme Court, in which is the above extract, for the inspection of the court, should they desire it.)

Surely there was no contempt of court, in the fact that Stephenson saw the appellant.

2d. That the appellant was the attorney in the Nash case. The appellant is a lawyer, dependent alone upon his profession for the support of himself and a large dependent family, and had the right to be the attorney of any man who saw fit to employ him in any of the courts, where he had the right to practice his profession—surely there is no contempt in this. What is it at best? that the appellant was the attorney in the Nash case; that Stephenson saw him and left soon afterwards. Any dereliction of duty in this, as a citizen or a lawyer? I had a right to be the attorney in the Nash case; Stephenson had a right to see me or any other man and afterwards to leave and go where he pleased. I had no control over him, or right to retain him; what con-

tempt of court in all this, I have never been able to see.

The appellant earnestly insists upon the following proposition: That the court below had no authority in any manner known to the law, to authorize the entering of the order of the 16th July, 1873, requiring the appellant to show cause why he should not be punished as for a contempt.

If this proposition can be maintained, it is an end of the whole matter upon the principle, that, if the order is a nullity, for the want of a case upon which to predicate it, then it follows as a legal sequence, that all the proceedings growing out of the order as the foundation, are null and void. It cannot be said that courts can make orders without right, and that right must be some reason in a case of this kind, that would justify summary punishment, should the matter not be explained to the satisfaction of the court. That is, that what is alleged in the statement of the grand jury, in relation to the appellant, would require that he should be punished by the court in accordance with the act of Congress of March 2d, 1831, should he fail to make answer thereto. Now, I submit, is there anything in the statement of the grand jury that would justify the court below in punishing the appellant for a contempt of any kind, no matter how trivial, or that could authorize the court to issue the order of the 16th July, independent of the question to be discussed hereafter, whether the court below could disbar a member of the bar from the practice of his profession, in a proceeding of this kind, when the pretended charge is not against him in that capacity, but against him, as any other citizen, and where the punishment should be the same as that meted out to other citizens, taking all most strongly against the appellant—

That is, that Stephenson saw J. S. Robinson, the attorney in the Nash case, and very suddenly absented himself; yet the grand jurors saw him upon the streets, so they say in their statement, how does this compare with his suddenly absenting himself after seeing the appellant.

The act of Congress, of March 2d, 1831, in the opinion of the appellant, is conclusive upon this point. "The power of the several courts of the United States to issue attachments and inflict summary punishment for contempts of court, shall not be construed to extend to any cases, except the misbehavior of any person or persons in the presence of the said court, or so near thereto, as to obstruct the administration of justice; the misbehavior of any of the officers of the said court in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, decree, or command of the said courts."

It is believed by the profession generally, that the cause of the passage of this act, was the result of what is known as the Peck case, and that it was intended as a limitation upon the power of the courts of the United States, to punish for contempts; and as this is well expressed in the case of the State v. Morrill, 16 Arkansas Reports, page 405, I adopt it here. Chief Justice English says, "After the impeachment of Judge Peck, Congress passed an act restricting the powers of the courts of the United States, in the punishment of contempts, and intended, doubtless, to deprive them of authority to treat out door publications of any character as such. In United States v. Holmes, Wallace Reports, Mr. Justice Baldwin, presiding in the Circuit Court of the United States, correctly remarked, that the act of Congress referred to was a limitation upon his power to punish contempts.

The Judicial power of the United States is vested in one Supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. (*Constitution of the United States*, Art. 3, Sec. 1.) The Supreme court was created by the Constitution—the District and Circuit courts by acts of Congress. When the latter were established and vested with certain judicial powers, the authority to punish contempts attached as an incident. (2 *Story on the Constitution*, sec. 1774.) But deriving their existence from Congress, it follows that their power to punish contempts is under its control. The act above referred to, however, applies, in its terms, to all the courts of the United States,—but whether the Supreme court, deriving its existence and powers from the Constitution, has regarded the act as an imperative limitation upon its authority to punish contempts, we have no means of determining—finding no adjudications upon the point, by it.

Perhaps the Supreme court has acquiesced in the act through that respect due to the Legislative will, without inquiry into the question of power.

The case of Judge Peck is familiar to the profession. Presiding in the District court of the United States for the district of Missouri, in the year 1826, and having decided one of several land cases pending before him, he published his opinion in the cause. Mr. Lawless, an attorney of the court, and engaged in the cases, published a criticism upon the opinion—not impugning the motives or charging corruption upon the judge, but discussing the correctness of his decision, and pointing out what he deemed to be its errors. The judge treated the publication as libelous, and punished its author as for a contempt of court, on the grounds that it tended to prejudice the determination of the remaining causes. Mr. Lawless com-

plained to the House of Reps. of the Congress of the U. S., of the conduct of the judge, and finally he was impeached for an official misdemeanor, and, on full discussion of the laws of contempt, acquitted by the Senate upon a close vote. The impression generally prevailed, however, that judge Peck exceeded his authority, and this, doubtless, led to the passage of the act of Congress above referred to." Now, if this view of the matter be correct, then, it follows, that it was the intention of Congress to restrict and limit the power of the courts of the United States to punish summarily for contempts those that should be committed in the presence of the court, or so near thereto as to obstruct the administration of justice; and, taking it for granted, what I admit to be true in a qualified sense, that a contempt committed in the presence of the grand jury, when engaged in their duties as such, or so near thereto as to obstruct the administration of justice, would be a proper subject of judicial control, and that the party, or parties, should be promptly and summarily punished by the court, as the grand jury is a part of the court, while they act as such.

Again, I submit, is there any contempt charged against the appellant in the statement by the grand jury of contempt in their presence, or so near to where they were engaged upon the discharge of their duties as to obstruct the administration of justice? This must be answered in the negative; and as the statement is the basis upon which the order of the court is made, and whatever the appellant was called upon to answer, in the court below, was in the statement—then it follows properly, as a conclusion, that if there was no contempt expressed in the statement as to him, then there was no authority upon which the court should have made the order, and it is therefore null and void.

The order disbarring the appellant from the practice of his profession, was entered of record on the 18th day of July, 1873, and to this order and its surroundings I ask special attention. Across this order is written in red ink, the words—

"Error," "marked error by direction of the Judge made in open court before said record was signed." See pages 204, 205 and 206.

JAS. O. CHURCHILL, *Clerk.*

The statement of the grand jury and order of the court to show cause why James S. Robinson should not be punished as for a contempt of court, was duly served on the 16th July, 1873; the disbarring on the 18th July, 1873; and on the 21st day of July, 1873, there was delivered to the appellant a duly certified copy of the order disbarring him, under the seal of the court, and attested by the clerk, which certified copy is in the possession of the appellant, and has been published in the public press in the State in which the appellant resides, and brought to the notice of the court and clerk by criticisms thereon. And yet the appellant, while the matter was in progress in the court below, nor his counsel, who were engaged in the Court below for him, ever saw or heard of the statement in red ink. And when the appellant took the transcript out of the Post Office, in the city of Washington and examined it, he was astonished to find the words in red ink. I hope the court will not understand me as coming in conflict with the doctrine that the Judge has absolute control over the records of his court until the adjournment; or that I mean to say that everything in this respect is not right and proper—not at all. What I mean to say is this: That inasmuch as the clerk of the court, by order of the court, had delivered to me a certified copy, under the seal of the court, and

the attestation of the clerk, three days after the order was entered of record, (and this red ink statement not written upon it,) that it was not then made, and that when made by the court the party affected by it should have been notified. And that when the order was made by the court declaring the order an error, the date when it was made should have been given. Again, the record shows that a motion was filed to vacate and set aside the order and judgment of the court, in this case, on the 22d of July, 1873, and an additional motion filed on the 26th July, 1873, and a substituted one on the 4th day of August, 1873, for the first one, as it was lost. Now it is evident that these motions were all filed to the judgment of the court that is *marked error*, for the reason that no other judgment was upon the record at that time, and surely we were not filing motions to vacate a judgment in the court below, when it had already been vacated by the action of the court; hence the necessity for the date. We have a right to know what day of the term, by date, any transaction occured in court, and specially when an order of the court is made and entered of record. And why the clerk wrote this order across the judgment of the 18th July, giving particulars and no dates, and dates in every other part of this record, is a little remarkable. But there is another point to which we invite the attention of the court upon this subject, and that is the words written in red ink could not have been ordered by the court, or written by the clerk until after the determination of the motions that were filed, as stated above. For certainly the court would not sit and pass upon motions to set aside and vacate a judgment that had already been marked, by order of the court "error." This would be simply ridiculous; therefore we are brought to the conclusion, that on the day when the court heard the argument upon those motions, which

was on the 25th of August, 1873, and overruled the motions, that the amendment was not made, as set forth in red ink across the disbarring order of 18th July, 1873.

Now, it may be said, why lay so much stress upon this little matter? For this reason, that the statement of the grand jury, the order of the court thereon, and the judgment disbarring the appellant, found upon the 1st and 2d pages of the record, are all that was ever served upon him; and for all that appears in the red ink statement, (isolated and alone) the error may have been marked the day it was made, and it is only by an examination of other matters, apparent upon the face of the record, that any conclusion can be arrived at in the absence of the proper date.

Again, it may be said, that the appellant was not disbarred from the practice of his profession for any thing alleged in the statement of the grand jury, or in the order to show cause why he should not be punished as for a contempt—but for a refusal in open court to answer the order so made—after filing the response of R. H. Sheldon, one of the parties to said order, and that it matters not whether there is any contempt stated in the statement of the grand jury, or any authority upon which the order is based; yet it was the duty of the appellant, when in the court below, to have made answer, and for refusing to answer even a void order, he should be punished.

I have already stated that the statement of the grand jury charged Sheldon with a flagrant contempt of court, and that the court had the right to issue the order as to him, and therefore as an attorney-at-law, by permission of the court, I filed his response, not that I thought it ought to be in writing, but from the fact that Sheldon was not a public man, and might become confused in

his oral statement to the court, and that I knew he would be punished severely, as he ought to be, if guilty; and hence his statement was made in writing that their might be no mistake. He was discharged.

I admit, for the sake of the argument, that James S. Robinson refused to respond to the rule as stated; (though not true in point of fact,) I have insisted in the argument that the grand jury statement disclosed no contempt against the appellant; and, therefore, that the court had no authority to issue the order, and no contempt could be committed in the refusal to answer such an order. That such was the opinion of the Supreme Court of Iowa, in the cases of the State against Start, which, in the opinion of the appellant, bears upon his case in several points of view. The 1st case is found, 7th Vol. Iowa Reports, pages 499 and 500. I will quote a part of the opinion referring the court to all of it: and will give a brief statement of the case. "It does not appear in what relation S. E. Start stood to the defendants, save that in an affidavit of one of the plaintiff's attorneys, he is stated to be one of the defendant's attorneys. In the final order of the court, it appears that he was a member of the bar. In answer to the rule, S. Start and Gaddis answered severally that they had not the possession nor the control of the key; that the safe was the property of S. E. Start, who had the control of it, and that they were unable to comply with the order of the court. S. E. Start answered, claiming property in the safe, and also stating that he had been garnished by the plaintiffs in the same suit. *The record further shows that he stated in open court that he had possession of the key, but refused to deliver it.* The final order recites that the said Start is a member of the bar of that court, and that, *being present in court and answering to the said rule, he informed the court that he then had possession of the key, and*

stated that he would not obey the rule and deliver the key to the sheriff as required. And it appearing that his health would be impaired if committed to the jail of the county until he complied with the order, the court imposed a fine of ten dollars upon him, and further directed that his license to practice law as an attorney be suspended until he should deliver the key to the sheriff, and otherwise obey the order of the court, as in the record referred to." In this case there is a rule of court to deliver the key of a safe to the sheriff, made against S. Start. Start answers in open court, and refuses to obey that rule, for this he is fined and suspended from his practice until he should obey the order of the court, and out of this has grown two cases, in the Supreme Court of Iowa; one to reverse the decision suspending and the other to reverse the order imposing the fine. In the first case stated, Justice Woodward, delivering the opinion of the court, says: "The defendant seeks a reversal of the order of suspension from the practice of law as an attorney, and assigns this order as error, and also, that none of the proceedings, as prescribed by chapter ninety-five of the code for the revocation or suspension of an attorney's power as such, were observed, in order to revoke or suspend the license of an attorney, the law (code, chapter 95) requires that there should be an accusation and charges, a notice and a day in court, *and it cannot be done summarily by order of the court. He is entitled to be heard. The court has authority to punish summarily for contempt, in certain cases, by means of fine and imprisonment,* but to disbar or suspend one as an attorney, the course directed in the statute should be followed. Therefore we are of opinion that the court erred in this part of the proceedings, and the order suspending the respondent from his practice, as an attorney, must be reversed."

And allow me to say that I have examined the laws of all the States, accessible to me, and there is such a similarity in them upon this subject, that the law of one may be deemed the law of all; but I will introduce the decision upon the question to reverse the fine. 7th Iowa, page 503, Justice Woodward says: "Start, the defendant, was acting in the defense of what he claimed to be his right of property. He does not appear to have done any act as an attorney, either in this cause or otherwise, but stood only as a third person claiming property in the thing. He is not punished for any act done as an officer of the court, nor even for the refusal in open court, to deliver the key, that is, it is not for a personal disrespect, but it is only for the refusal to obey the order of the court to deliver the keys. *And we are of the opinion that it was not within the authority of the court to make the order, and consequently that it could not punish the defendant as for a contempt. The order of the court imposing the fine is reversed.*

These cases, in the opinion of the appellant, are correct inasmuch as they show, that when the court has no authority to make an order, and therefore that the order is a nullity, that is not a contempt to refuse to comply with it, for in these cases it cannot be contended that if the court below had authority to make the order, the refusal to comply would be a personal disrespect of the court, and when done in open court, would be a contempt of court—that would justify summary punishment. In these cases the punishment is light compared with those inflicted upon the appellant—a small fine, and temporary suspension; yet the Supreme Court say that they are both reversed for want of authority, in the one case to make an order, and in the other for the reason that an attorney cannot be disbarred or suspended in this summary manner. One other point is specified in these

cases and that is, that Start did no act as an attorney at law; that there was no charge against him as an attorney at law, but yet, the judgment affected him as such, and in this there was manifest error—for the punishment should conform to the charge, and if the charge was against S. Start, the punishment should be against S. Start, and not against S. Start as an attorney at law. In the case of the appellant, the order is against J. S. Robinson, and the order disbarring him for an alleged refusal to answer the order, is against James S. Robinson, Esq. Nothing said about an attorney at law; no charge made as such; but the punishment is against James S. Robinson by striking his name from the roll of attorneys, for this refusal. Should not the punishment have been for a contempt of court, in such manner as the statute provides, to be summarily inflicted. Certainly if all is true as stated, that a contempt is set forth in the statement of the grand jury, and the court invested with proper authority to make the order, and the refusal to answer that order in open court tended to obstruct the administration of justice—there is an adequate punishment given by the law to punish contempts, and that, too, at the discretion of the court, from which there is no appeal, and no escape only through executive clemency, and surely this ought to be enough. Brightley's Digest of the laws, United States, page 189, sec. 1, "All the said courts of the United States shall have power to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same."

This brings up the question as to the power of the court below to summarilly strike the appellant from the roll of attorneys, for what is charged, admitting it to be true, what is alledged in the order of the 18th July, 1873.

The charge is against him as an individual; the punnishment as an attorney-at-law. The refusal of the appellant (supposing it true) in open court would be no more than the refusal of any other private citizen in open court, and the punishment should be the same. But should the appellant commit a contempt in the progress of some trial in open court, in a moment of excitement, and refuse to obey some order of the court, could the court summarily strike him from the roll for this, without notice, without charges, without a day in court, without a hearing? I think not. There is a law to punish contempts of all persons alike, where they violate its provisions and it is regarded by the Congress of the United States as ample and sufficient, for the punishment is left in the discretion of the courts, as to the amount of the fine, and the length of the imprisonment. And while upon this subject, I will introduce the last and most important decision of the Supreme Court of Arkansas, (the State in which the District Court of the United States for the Western District of Arkansas is held) upon the doctrine of contempts. 22 Ark., pages 149 to 157 inclusive.

Chief Justice English, page 151 says, "But the power of the court to punish summarily for contempt by fine, and imprisonment is one thing, and its power to strike an attorney from the roll is another, and distinct thing though the conduct for which an attorney may be disbarred, may in some instances, involve a contempt of court. If an attorney is guilty of contempt of court, he, like any other person, is subject to fine and imprisonment, and must abide the consequence without the right of appeal or writ of error; but where an attorney is stricken from the roll, and thereby cut off from practicing his profession, he is deprived of the exercise of a franchise upon

which he depends, in most instances, for maintainance and for reputation; and has he no right to a review of the judgment by an Appellate court, however erroneous?"

On page 157, the learned judge, after discussing the law of contempts, generally, comes to the conclusion—"but whether the court proceed under the statute, or in the exercise of its inherent power for offences not embraced in the statutes, the attorney is entitled to notice, and an opportunity to be heard in defence. The practice in the English and American courts is for the court to issue a rule upon the attorney, reciting the substance of the information or charges against him, to show cause why he should not be stricken from the roll." A number cited at the close of which is, "Ex parte Bun, 9 Wheaton, 529, Chief Justice Marshall said the charges should be verified by affidavit."

Ex parte Bradley, 7 Wall. Rep. p. 373, Mr. Justice Nelson, delivering the opinion of the Supreme court of the United States, said: "It is true, where a contempt is committed in the presence of the court, no other notice is usually necessary, but a proceeding to punish an attorney generally for misbehavior in his office, or for any particular instance of misbehavior, stands on very different ground."—And upon p. 374: "we do not doubt the power of the court to punish attorneys as officers of the same, for misbehavior in the practice of the profession. This power has been recognized and enforced ever since the organization of courts, and the admission of attorneys to practice therein. If guilty of fraud against their clients, or of stirring up litigation by corrupt devices, or using the forms of law to further the ends of justice, in fine, for the commission of any other act of official or personal dishonesty and oppression, they become

subject to the summary jurisdiction of the court. Indeed, in every instance where an attorney is charged by affidavit with fraud or malpractice in his profession, contrary to the principles of justice and common honesty, the court, on motion, will order him to appear and answer, and deal with him according as the facts may appear in the case. *But this is a distinct head of proceeding from that of contempt of court, or of the members thereof, committed in open court, or in immediate view and presence, tending to interrupt its proceedings, or to impair the respect due to its authority. This distinction is recognized in the act of* 1831, *already referred to, which, after providing for personal contempt in presence of the court, authorized attachments to issue, and summary punishment to be inflicted for "the misbehaviour of the officers of said courts in their official transactions."*

We might rest the case upon these decisions; one from the highest judicial tribunal in Arkansas; the other, the highest in the United States; and each the latest upon the question involved. These cases show conclusively that an attorney cannot lawfully be stricken from the roll, summarily, as a punishment for contempt, as was done in the court below. But that when an attorney commits a contempt in the manner pointed out by the act of Congress of March, 1831, he is punished as other persons. For Congress did not make a distinction as to persons who should commit contempts, but left the punishment by a fine and imprisonment, at the discretion of the court; and all courts would take into consideration in administering the punishment, the intelligence of the offender, and from which punishment there is no escape only through Executive clemency.

Again, it is insisted by the appellant, that the court below should have conformed to the laws of the State of Arkansas regulating the practice in the State Courts, as

to the form and mode used therein to disbar attorneys from the practice of their profession; and the decisions of the highest tribunals upon such subjects in the State where the court presides, in interpretation of the State law upon the subject. This should be done as a matter of courtesy. Was there no law upon the subject, as lawyers receive their license from the State Courts, and are permitted to practice in the United State's Courts by virtue of them?

But the act Congress of June 1st, 1872, section, 5, vol. stat., "That the practice, pleadings and forms, and modes of proceeding in other than equity, and admiralty causes in the Circuit and District Courts of the United States, shall conform as near as may be to the practice, pleadings, and forms and modes of proceeding, existing at the time in like causes in the courts of record of the State within which such Circuit or District Court are held, any rule of court to the contrary notwithstanding; Provided that nothing herein contained shall alter the rules of evidence under the laws of the United States, and as practiced in the courts thereof."

Now the appellant proposes to show from the highest tribunal in the State of Arkansas, the law and practice governing in such cases in that State, and we will be able to see how near the District Court of the United States for the Western District of Arkansas conformed to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State in which that court is held. In the case of Beene v. the State, 22d Ark., Rep. page bottom, 154 and 155, Chief Justice English, delivering the opinion of the court, says "The plaintiff in error complains that he was condemned and stricken from the roll without notice or opportunity of being heard. The stat-

ute prescribing the mode of proceeding to strike an attorney from the roll, (Gould's Dig., chap. 19, sec. 12 to 28) requires charges to be exhibited against him, verified by affidavit in the County where the offence is committed, or the accused resides. Sec. 13, 28.

It is made the duty of the court in which the charges are exhibited, to fix a time for hearing, allowing a reasonable time to notify the accused.

The clerk of the court is required to issue a citation to the attorney, and answer the charges, a copy of which must be attached to the process. sec. 15.

If the attorney fails to appear after service of the notice, his appearance may be compelled by attachment, or the court may proceed ex parte. secs. 16, 17.

If the charges allege a conviction of the attorney of an indictable offence, the court may strike him from the roll on production of the record of conviction, without further trial, sec. 18.

If the charges allege that the attorney has been guilty of an indictable offence, the court may suspend the proceeding until the attorney is tried for the offence, and then act upon the record of his conviction or acquital. secs. 19, 20, 21.

If the matter charged against the attorney, is not indictable, he may require a jury to inquire into the truth of the charges. sec. 22. The province of the jury in such would be simply to inquire and find whether the charges were true or unfounded, and the court would pronounce judgment upon the finding, sec. 23.

It is manifest, from the record in the case before us, that the charges were not exhibited against the plaintiff in error in the mode prescribed by the statute; that the court pronounced judgment summarily, on motion of an attorney

representing the members of the bar, and that no citation was issued to the accused, or opportunity afforded him to be heard, and when it was interposed that the courts of Arkansas, had inherent power to punish contempts independent of the statute, and which was admitted, the learned judge after an able review of the cases came to this conclusion—"But whether the court proceed under the statute, or in the exercise of its inherent power for offences not embraced in the statute, the attorney is entitled to notice, and an opportunity to be heard in defence. The practice in the English and American courts, is for the court to issue a rule upon the attorney reciting the substance of the information or charges against him to show cause why he should not be stricken from the roll." page 157.

This case presents the State practice, and also an able review of the cases in relation to the inherent power of courts to punish for contempts, independent of the statute, and arrives in both instances at the same conclusion, that an attorney at law cannot be summarily stricken from the roll, that he must have notice, and an opportunity to be heard in defence, and for these reasons the case was reversed upon writ of error. This case presented to the court the most wilfull and flagrant contempt that has been perpetrated in modern times—no less than the beating of the judge for his official acts—yet the court reversed it for the reasons stated.

The appellant respectfully invites the attention of the court to the amended record, bearing date July 28th, 1873.

The statement of the grand jury, and order of the court, dated July 16th, 1873, were served upon the appellant in the court below, the day they bear date. On the 18th July, 1873, the appellant was disbarred. On the

21st day of July, 1373, by order of the court, the clerk delivered to the appellant, a duly certified copy of the order of the court, disbarring him on the 18th July, 1873. These are now in the possession of the appellant; and I state to this honorable court that these are all that were served upon me. The order of the 16th, says: "to show cause why they should not be punished as for a contempt." The amended order of the 28th to "show cause if any they can *forthwith* and in *writing* why they should not be punished as for a contempt." Now admit that it was the intention of the court to have had the order of the 16th July. What the order of the 28th would make the record of the 18th, and by some mistake that intention was not carried out, this was not the fault of the appellant, and he is in no way responsible, and should not be injured thereby. It is evident there was no such order made by the court on the 18th of July, for on that day we have a judgment of the court disbarring the appellant entered of record, and that judgment upon the order of the 16th July, and a certified copy by order of the court of the judgment on the 21st July, showing that this amended record was not then thought of. What reason could be assigned by the clerk for such a gross omission as to neglect to place the amendment upon the record on the 18th, when all was fresh, and the judgment entered of that day disbarring the appellant, and those proceedings read publicly in court the next morning. The record shows conclusively that there was no order amending the record placed thereon until the 28th July, ten days after the judgment disbarring the appellant, and it is entered now as then, to the identical day that the appellant was disbarred. Allow me to call the attention of the court to the additional motion to vacate and set aside the order disbarring the appellant of the 18th July—which

was filed on the 26th of July, in which the fatal defects of that judgment are set out and this amended record was made to avoid the objections. In the recitals this language occurs: "And afterwards, to wit, on the 18th day of July thereafter, it appearing to the court that said order had not been properly entered, it was ordered that the same be amended and read as follows." Now it is clear that though this purports to be done on the 18th July, that it was not placed upon the record until the 28th July. It was simply impossible for the appellant to know what was in the mind of the court on the 18th and not expressed until the 28th, and to answer on the 18th the order of the 28th; and to answer the order of the 28th on that day, or afterwards, for the reason that he had no notice, or opportunity to respond thereto, having been disbarred ten days before. Now, it is clear, that the *nunc pro tunc* record of the 28th, is designed to carry its force back, and lodge itself upon the record as though it was done on the 18th. What, then, is the conclusion; that on the 18th? The order had not been properly entered; that the order previously entered needed amending; that it was amended, and made to read very differently from what it read before, and these improper entries of the record, are those that were served upon the appellant, in the court below, and none others. I submit to this honorable court, whether the court below, admitting that improper entries had been made, and orders entered in a shape that were not intended—that when these entries were made proper, and the orders amended, according to original intention by the court, whether on the 18th or 28th of July, as specified in the amended record, that the appellant should have been served in the court below with the proper entries, that he might have had an opportunity to respond thereto.

There is another feature about this amended order. Sheldon was discharged on the 18th, and Stephenson swears, in his answer, heretofore referred to, "that no such order as the one to show cause *forthwith* and in *writing, was ever served upon him*, and the appellant has sworn the same in his motion filed in this cause, on the 1st day of August, 1873, and these are of record in the same transaction."

I have examined all the cases that has been before this honorable court since its organization to the present time, wherein lawyers have been the parties, as in this case, and, as far as accessible to me, a great many in the different States; yet I have been unable to eliminate from any of them, that an attorney, with a large practice in the court, daily in attendance thereon, and at the time engaged in the conduct of a very important trial, ever had a rule to *answer forthwith* and in *writing* entered up by the court against him—and some of these have been of the most flagrant character—yet, they had *notice* and a *reasonable time* to *answer*. This is upon the hypothesis that the amended order was served, (which was not done.) If this is the practice, with all due respect, I am greatly mistaken.

Thus far I have proceeded upon the hypothesis that all was true as stated in the record; that there are no explanatory reasons given, or facts stated; and yet that the action of the court below was error, viewing it from the strongest standpoint against the appellant, and when it is considered the momentary manner in which the court proceeded, it will be observed that it was impossible to set up the facts in an answer, as he was disbarred without any opportunity to answer; and the facts are set up, in the only manner that they could be under the circumstances, in the motions to set aside and vacate the order

and judgment of the court below. The appellant invites the attention of the court, respectfully, to the facts that are set out in the record, and especially from the 7th to the 12th causes assigned, inclusive of the motion filed on the 1st day of August, 1873. The facts stated are certainly true, and could not have been controverted, or it would have been done. This was not done in a corner, but in the open day, and in open court; in the presence of jurors, parties, witnesses, officers of the court, members of the bar, and the public there assembled; and the facts are sworn to, and they remain twenty-five days in court before there is any adjudication upon them, and the court says "well and sufficiently advised in the premises." Now, if this was a judicial transaction, then what was sworn by the appellant was material to the issue, and if false would have been a proper subject of judicial investigation; and being stated and sworn to as the action of the court, in the same court, before the same judge, would it not have been controverted, if it could have been done, by some one of the assemblage there assembled? And, allow me to say, that the record discloses the feeling that existed at the time, and for a long time prior to this transaction, between the judge and the appellant.

The 9th cause assigned, sets up the error in the amended judgment of the court below, in the only manner that it could have been done, by distinctly stating in what it consisted—"The said James S. Robinson having, at the time, notice that he was required to respond to said rule," "when, in *truth* and in *fact*, *no such rule* was *made* and no *notice given or served*, upon the said Robinson, on the 18th day of July, 1873;" and it is disclosed from whom he received information; when, and how, he received it. Surely this put in issue the amended judgment as a fact in relation to its recitals, and in the absence of counter

proof, where it could have been so easily obtained, was there any? The presumption ought to be in favor of that part of the record that is sworn to by the appellant, and sustained by affidavits of distinguished gentlemen—members of the bar—that were present on that occasion, and whose opportunity for information will be readily perceived. [I publish them, as a part of my argument, at the close, by addenda, and ask attention to them.]

The tenth assignment puts in issue the recitals of the judgment of 28th July, 1873, and I will here copy it as a part of my argument, ("because the said judgment rendered nunc pro tunc, on the 28th day of July, A. D. 1873, does not recite the facts of this case, which are: that the said Robinson when informed by the court that he must respond to the rule which had been served upon him in this case, (meaning the rule of the 16th July, on the first page of the record,) took up the said rule, and stated to the court that there was nothing in the rule which required him to make answer thereto; that there was only two or three lines in the whole rule, which made allusion to him, and that the only statement therein contained against him was, that he had seen Cyrus R. Stephenson, who shortly afterwards went off and could not be found; and that he, Robinson, was the attorney in the Nash case, and proceeded to answer, to the effect, that there was no charge of anything contained in said rule, which he could answer; that the court then said he required that he, Robinson, should answer the rule in writing, to which said Robinson responded, that the rule itself did not require the answer to be made in writing—when the court said, I will enter an order requiring it to be made in writing, and in an excited manner turned to the clerk, saying, at the time, Mr. Clerk, enter an order requiring Mr. Robinson to answer the rule in writing;

when Robinson, who was standing at the time upon his feet, as he had been from the time he had commenced insisting that there was nothing in the rule to answer; starting to walk across the front of the bar, responded by saying, I shall answer nothing, and only so far proceeded with a sentence, which when finished, as intended would have been—I shall answer nothing, until the order to answer the rule in writing shall be served upon me; that at the word nothing, the judge interrupted him, and in a highly excited manner said, Mr. Clerk, strike the name of Mr. Robinson from the roll of attorneys of this court, and, Mr. Marshall put Mr. Robinson outside the bar; Mr. Robinson asked permission to close his business, as he was then engaged in a very important trial, wherein four men charged with murder in this court, and which case was then in progress and partially tried. The court replied; Mr. Marshal, put Mr. Robinson outside the bar. Robinson then got his hat and cane and walked out."

This assignment is a history of the transaction, and certainly of such a nature as would demand from the judge proof to the contrary, could it have been obtained. It is *truth* that could not be contradicted; a reiteration of facts that no person who was present in that assemblage, whether friend or foe to the appellant, could contradict. It states under oath, that the judge acted in an "excited manner;" that "the judge interrupted him, and, in a highly excited manner." Surely this, as a fact, was a derogation from the judicial dignity, for no act should be done in an "excited manner," and "highly excited manner," that would evince an ebullition of temper, and it was incumbent upon the judge to have shown upon the record, by some counter proof, that it was false, or at least, a mistake, when there was such a vast number to obtain it from—it is truth. The appellant is forty-four

years old, and with the exception of the time the war was waged, has been engaged perseveringly and laboriously in his profession for twenty-four years, and by the grace of God and severe industry, had acquired a reputation upon which himself, wife and seven children could depend for a support; and allow me to say that there is not a citizen or professional gentleman in the United States who holds in higher esteem the judiciary than the appellant, and treats them with more dignity in their stations. But I hold while it is the duty of the lawyer to treat the courts with respect in an eminent degree, there is a correspondent duty from the court to the bar. I have often thought that the bar was the legal family of the bench, for judges are but lawyers elevated. And generally judges know how to appreciate the double feeling, that of judges and lawyers—having practised long themselves. The appellant has some experience in both, and, therefore, can enter into the feelings of each. Now I wish to present the facts in this record a little more fully. Was it not enough that the appellant was "interrupted in a highly excited manner." Stricken from the roll summarily, in the midst of his business; an important trial suspended; much other business retarded, and refused permission to close his business? Without adding insult to the scene, what was the necessity for the order of the court—Mr. Marshal put Mr. Robinson outside the bar? Should not time have been given until I could have went out. This, with all the other little incidents, shows the sweetness of the temper that was manifested upon the occasion, and illustrates the motives that prompted the act. But I have the great satisfaction, that by the bar who were present upon that occasion, who will not and cannot tolerate contempts, I have been sustained, even to preside over them as judge by a special election held by themselves in the City of

Fort Smith, where the lawyers, the judge that struck me from the roll, and the appellant, all reside—*since that time.*

The eleventh and twelfth assignments may be referred to together. The twelfth states that the rule to show cause in writing was never served upon the appellant; that he would have responded to it, had it been served under oath; and the eleventh, that the appellant did not (commit a contempt in the manner specified) "in open court refuse to respond in writing to said rule, as required by the order of the court." But the appellant sets up distinctly and unmistakably that, "owing to the highly excited manner at the time, and the indignity that the said Robinson believed at the time was offered by the court towards him in presence of the bar and the public; and from the further fact that it was known by the court, bar and public that a bitter state of personal animosity existed between the said Robinson and the court for a long time past. The said Robinson responded in an *earnest manner*, "I am now, as then, unconscious of any contempt; I know there was none intended; I was in good temper; I was answering the rule to the best of my ability; and when the judge hastily, and in an "*excited manner* turned to the clerk, as he did, (and remember that actions are hard to describe on paper,) I was completely surprised. I look upon it now, as I did then, as an unprovoked insult, without right, intended by the court from the bench in the presence of the bar and public, as a reflection upon the appellant. To say otherwise to this honorable and learned tribunal would be to degrade myself in my own eyes. If I am wrong in this, I am honest in it; and if the facts do not warrant the conclusion, I am greatly mistaken. There never has been a quarrel or word of ill feeling between the judge and the appellant, only those

that are specified in the record. The ill feeling grows out of the situation in Arkansas, and the relative position of the parties to that situation; and this same record has a piece of that situation in it.—I mean the order of the court appointing jury commissioners; the manner in which that order specifies that they should discharge their duties; the peculiar person selected in the order to draw the grand and petit jurors; the specific class of persons that were chosen; the motion filed by the prosecuting attorney to quash the panel of grand and petit jurors, for the reasons therein stated. This motion was written by the appellant. At every term of the court we have trouble about the manner of selecting jurors; and at all times the appellant has contended earnestly against the orders of the court, though, respectfully, in favor of what he believed to be the law. We have a plain State law, and an act of Congress regulating the practice. In the State practice there are three jury commissioners, in this order four. They are to be sworn and organized, and retire to the jury room; be kept free from the intrusion of any person, and not separate without leave of the court. Then the manner in which *the commissioners shall select and draw the grand and petit juries.* In this order they are appointed in different Counties, and never get any nearer together; meet in no jury room—in fact never meet at all. They send up a number of names, and out of those, the clerk, who is the appointee of the court, who is not a jury commissioner, and without oath, draws the jurors. Of this we complain, and for the law we contend, and though we have a uniform law, there are no two sets of jurors drawn alike. But it is impossible for this court to comprehend all this, unless they could, at the same time, understand the situation there; and an explanation of that is outside of the record. The law is found upon pages 17 to 22 inclusive, amendments to code of Criminal Practice—Laws of Arkansas.

The appellant, upon his oath, in the eleventh assignment states: "But on the contrary, utterly disclaims any intention to commit a contempt of the court, or to act in defiance of its orders or authority, at the time specified in the judgment of the court, and was not conscious at the time of any grossly, contemptuous, contumacious, and defiant conduct towards the court." Now, if independent of all the facts that are stated in this record, and upon the cold law, what is stated is indisputably true. What, then? Could more have been asked by the court below than that the appellant has stated under oath in the above; that there was no intention to commit a contempt; that if there was any act or word, they were not so intended; that he was not conscious at the time of contempt? What more could be asked from any man, much less a member of the bar?

I submit to this honorable court, that should a member of your bar, in an unthoughted moment commit what is really a contempt of court in open court, and you should punish him summarily, should he be a man against whose character and professional integrity there was nothing, and of long standing in the profession, and make oath as above, you might reprimand him for thoughtlessness, but you would forgive, for the want of intention—the offence.

In conclusion, should this court think, from all the circumstances that have been presented in this case, that the punishment of the appellant in the court below is right and proper that he should be debarred from the practice of his profession, his only means of procuring a livelihood for himself, and a large dependant family, he will bow in humble respect to the decision of the highest judicial tribunal of his Country, without a murmur.

JAMES S. ROBINSON.

UNITED STATES OF AMERICA, }
Western District of Arkansas. }

J. S. GAGE, of lawful age, being duly sworn, deposes and says, that he is an enrolled and practicing attorney of the District Court of the U. S., for the Western District of Arkansas. That he was present in court on the morning of the 18th day of July, A. D. 1873, and that on that morning, James S. Robinson, Esq., an enrolled and practicing attorney of said court, appeared at the bar of the court, and filed the response of R. H. Sheldon, one of the persons against whom an order had been made, to show cause why an attachment should not issue against them for contempt. Wm. Story, the judge presiding, remarked, that he, the said Robinson, too, was required to respond to the said rule; to which the said James S. Robinson replied, yes sir, I am here ready to respond; to which the said judge rejoined, that he would be required to respond in writing. He then replied that the rule did not require it to be in writing, when the judge ordered the rule to be amended by requiring the response thereto to be in writing, when the said James S. Robinson said that he would not answer anything until—here he was abruptly interrupted by the court, and the judge ordered the clerk to strike Mr. Robinson's name off the roll of attorneys, and, in a gross, abrupt manner, ordered the marshal to remove him from the bar.

That on the next morning, Wm. M. Cravens, Esq., an enrolled and practicing attorney of said court, appeared at the bar and asked that James S. Robinson, Esq., be permitted to appear and continue in the defence of his clients, Cæsar Checot, Calmon Thompson, Joe Colbert and Fenton Kemp, who were then on trial for murder—the said J. S. Robinson being the only attorney in their defence. This request was refused and denied by the court.

That he was in attendance on the court regularly, and did not know or hear of the judge directing or ordering the order disbarring the said James S. Robinson to be marked *error*, or in any way amended or modified, until long after the said James S. Robinson had been excluded from the court; and if the judge did so direct it to be marked and changed. It was not done in open court, when this affiant was present.

JOSEPH S. GAGE.

Subscribed and sworn to, before me this 24th day of October, A. D. 1873.

[SEAL.] C. P. SWIFT,
Notary Public.

STATE OF ARKANSAS, } *Western District of Arkansas.*
COUNTY OF SEBASTIAN, }

On this 24th day of October, A. D. 1873, personally appeared before the undersigned authority, Ben T. DuVal, to me personally well known, and stated: that he is a lawyer by profession, and resides at Fort Smith, Arkansas, and an enrolled and practicing attorney in the District court of the United States for the Western District of Arkansas; that he was in attendance on said court on the morning of the 18th day of July, A. D. 1873, when the roll of attorneys of the court was called over by the judge for motions, James S. Robinson, Esq., when his name was called, stated that he wished to file the response of R. H. Sheldon, a deputy marshal, to a rule of court entered against him, &c. After filing the paper, Judge Story remarked, there is a rule, also, against you, Mr. Robinson, to which Mr. Robinson responded "yes, sir, I know it, and am now ready to respond," and was proceeding to make an oral response, when the judge inter-

rupted him and said, you must respond in writing. Robinson replied, that the rule served on him did not so state; the judge said, it should have done so, and ordered the clerk to amend the order of the court if it did not require the response in writing. Robinson walked up to the clerk's desk to look at the record, and had turned to walk back towards his seat, when the judge ordered the clerk to amend the order so as to require the response of Mr. Robinson to be made in writing. Mr. Robinson remarked, as he was walking, "I'll answer nothing." The judge immediately interrupted him, and said, "Mr. Clerk, strike Mr. Robinson's name from the roll; Mr. Marshal, remove Mr. Robinson outside of the bar." Robinson, having reached his place, turned toward the court and asked if he would not be permitted to finish the business he had already commenced. The judge peremptorily repeated his order to the marshal, to remove Mr. Robinson outside of the bar, which was the only response made by the court to the inquiry.

Robinson then walked outside of the bar, and since then, has not been permitted to come inside of the bar when the court was in session, or to transact any business in the court. When Robinson said "I'll answer nothing," affiant supposed he intended saying something more, but the order of the judge to Mr. Clerk, interupted him, and the sentence was never finished.

The day before Robinson was disbarred, he was engaged in the defence of four negroes, who were indicted for murder in the Choctaw Nation, and he had filed a plea in the jurisdiction which had been submitted to a jury, and a verdict had been rendered against the defendants on the plea; the trial on the plea of "not guilty," was to have taken place on the day he was disbarred.

On the following day, the partner of the affiant, Wil-

liam M. Cravens, Esq., applied to the court for permission for Mr. Robinson to finish the defence of the four negroes above referred to, which was refused. The negroes, one of whom was named Cæsar Checot, the names of the others he does not remember, were in jail, insisted upon having Robinson to defend him; they preferred him and had paid him for the service. The judge insisted upon appointing Mr. Cravens to defend them, after he was informed of the wishes of the defendants, and continued the case until the next term, and allowed them to give bail for their appearance.

On the 22d day of July, affiant filed a motion to set aside the order disbarring Robinson, his partner. Mr. Cravens, and Mr. Humphreys, were also representing Robinson, in presenting the motion. On 28th July, without any notice being given, the judge caused the clerk to enter on the record an entirely new order, embracing the original order on Robinson to respond, as well as the order disbarring him. The statements and recitals in said amended order are incorrect. Mr. Cravens, in behalf of Robinson, asked that it should show that the Marshal had been ordered by the court to remove Robinson outside of the bar, which was refused.

On the 1st day of August, another motion was filed to set aside the new order, and the affiant has read the said motion, to-day, and says that all the statements made therein, in regard to the proceedings of the court, on and after the 18th day of July, 1873, are incorrect.

This motion was overruled; it is set out in the transcript furnished by the clerk, to Robinson.

BEN. T. DUVAL.

Sworn to and subscribed before me, the 24th day of October, A. D., 1873,

JAS. O. CHURCHILL,
U. S. Commissioner.

JOHN T. HUMHPREYS, an enrolled and practicing attorney in the District Court of the United States, for the Western District of Arkansas, state, on oath, that I was present in said court when James S. Robinson, Esq., one of the attorneys of said court, was disbarred by order of the judge thereof, the Hon. Wm. Story.

That I have carefully read the foregoing statement, under oath, of Col. B. T. Duval, and find it to be a true and correct history of the facts of that case and of the order and manner in which the same occurred.

JOHN T. HUMPHREYS.

Sworn to and subscribed before me this 25th day of October, A. D. 1873.

JAS. O. CHURCHILL,
U. S. Commissioner.

WM. M. CRAVENS, being sworn, states that he is, and was on the 18th day of July, 1873, an attorney practicing in the District Court of the United States for the Western District of Arkansas. That on that day he went into the court-room, about the conclusion of the motion hour in the morning, and was immediately called outside the bar by Col. James S. Robinson, theretofore a practicing attorney of said court, and informed by him that Judge Story had just disbarred him, and on being enquired of by me for what, he said he did not know, only that "as he was proceeding to make his response to the rule of the court upon him, the Judge had said he must answer in writing, when he, Robinson, said the rule did not require him to respond in writing, when the judge said it was so intended, and turned to the clerk, and directed him to so amend the rule as to require Mr. Robinson to answer in writing, when Robinson commenced to say I will answer nothing in writing, until the rule re-

quires it of me, but had only uttered the sentence as far as the word "nothing," when the judge stopped him suddenly, with the order to the clerk to make an order disbarring him, and to the marshal to put him outside the bar. This was the statement as made to me by Col. Robinson, just after thetr ansaction was said to have occurred. At the request of Col. Robinson, I applied to the court to have the order disbarring Col. Robinson, suspended until the trial of one Caesar Checot, and three other negroes charged with murder, had been concluded, as he was the only attorney they had, and they were unable to employ any other. This application was refused, as also the application I made to have the record so amended as to show that the Marshal was ordered to put Robinson outside the bar, after the order disbarring him, on the 18th of July, he was not allowed, but was refused permission to practice as an attorney of the court. The order of the 18th July was, by the court, on my application, refused to be modified and the order made on the 28th July was without any notice to me or to any other attorney of Robinson, or to Robinson himself. So far as I know I heard of no notice.

After Col. Robinson had been disbarred, I was appointed by Judge Story to represent these four negroes, above referred to, and at at his instance, and on his agreement to admit them to bail, I made for them an application for a continuance of their case, which was granted.

WM. M.CRAVENS.

Sworn to and subscribed before me this October 25, 1873.

[SEAL.] G. W. SCHNEIDER,
Notary Public, Sebastian Co., Ark.

United States Supreme Court.

October Term, 1873.

EX PARTE JAMES S. ROBINSON
PRAYING FOR A WRIT OF MANDAMUS.

No. 14. *Original.*

Brief of Counsel for Petitioner.

In July, 1873, the grand jury of the western district of Arkansas having made an unsuccessful effort to get before them a witness by the name of C. R. Stephenson, reported the matter to the judge, and requested him to have the witness brought before them. The judge took no step in that direction, but laid a rule on the said C. R. Stephenson, on this petitioner, and on Sheldon, a deputy marshal, to show cause why they should not be punished for a contempt of court.

No act was assigned as contemptuous, and no time was fixed for showing cause, either orally or in writing.

On the 18th July, Sheldon, the deputy marshal, showed cause in writing, and was considered innocent.

The judge then reminded petitioner he was also ruled to show cause, which he did, saying:

"Yes, sir; I know it, and I am here to respond. I don't "know what there is for me to answer. It says I saw

" Cyrus R. Stephenson. I do not know what the grand " jury has to do with my private business in my law office."

Here the judge said: " You must answer in writing;" to which petitioner said, " The rule itself does not re- " quire me to respond in writing."

Upon this the judge said, " It should have done so; " you will amend the order if it does not, Mr. Clerk."

Petitioner declined to answer until it was amended. The judge said, " Well, I will make the order for you to re- " spond in writing now. Mr. Clerk, you will enter an " order requiring Mr. Robinson to answer the rule in " writing."

Upon which petitioner said, "I will answer nothing——;" but before he could complete the sentence the judge ordered the clerk to strike petitioner's name from the roll of attorneys, and the marshal to remove him from the bar.

The judge avers that on this occasion the tone and manner of petitioner were angry, disrespectful, and defiant, evincing an intention to disobey and treat with contempt an order of the court, and to intimidate the judge in the discharge of his duties.

Petitioner, by counsel, moved the court subsequently to vacate this order, averring that the sentence he uttered, "I shall answer nothing," was incomplete, and that the prompt action of the judge had prevented him from finishing it, and distinctly averring on oath that he had not intended any disrespect to the court.

It is shown by the transcript of the record made part of the petition that the order of 18th July was cancelled by the judge, and another order disbarring petitioner was entered, of which petitioner had no notice, or opportunity to be heard, was not present when it was made, and had no knowledge of it in any way until after it was entered.

POINTS.

1. The judge erred in laying a rule on petitioner to show cause why he should not be punished for contempt of court, on the statement of the grand jury, for the acts imputed to him by them, either in direct statement or by insinuation, were done out of the presence and hearing of the court, and could not be matters of contempt.

Act of 2d March, 1831, 4 Statutes, p. 487.

2. The judge erred in interrupting petitioner while he was commenting on the grand jury. What he was saying was responsive; and he had a legal right to repel in proper terms a false insinuation of that panel.

3. The judge erred in directing his rule for contempt to be changed, and requiring petitioner to show cause against it forthwith in writing, because the rule itself assigned no contempt; none had been committed; and such an abrupt order, founded on no cause, and seeming to sanction an odious and false insinuation of the grand jury, was inappropriate to the dignity of the court, and having a direct tendency to influence and irritate.

4. The judge erred in interrupting petitioner before he could explain why he would answer nothing, and in striking his name *instanter* from the rolls and ordering the marshal to put him outside the bar. A mere contempt of court cannot be punished by expulsion from the bar.

Act of 24th September, 1789, section 17.
Act of 2d March, 1831, 4 Statutes, p. 487.

5. The judge erred in confounding the offence of contempt of court with that conduct which justifies expulsion

from practice. One may merit expulsion, though guilty of no contempt; for instance, the commission followed by conviction of a crime committed not in his character as a lawyer.

See the observations of Nelson, J., in *ex parte* Bradley, 7 Wallace, p. 373.
Stephens *vs.* Hill, 10 Meeson and Wellsby, p. 28.

6. The judge erred, after cancelling his first judgment disbarring petitioner, in entering a second judgment without notifying petitioner and giving him an opportunity to be heard. The order cancelling the first judgment was, in effect, ordering a new trial where the *status* and most valuable franchise of petitioner was in issue, and he clearly had a right to be heard on the second trial.

7. The judge erred in not accepting the statement made under oath by petitioner on the first of August, 1873, within three days after the second judgment; an expurgatory oath should always be considered a sufficient amends in case of contempt.

8. The judge erred in not revoking his order after the answer orally made by petitioner, as well as the written answers of both the other parties involved in the original charge of contempt, which had shown that no contempt was committed or designed.

We respectfully submit the above, and rely at the same time on the brief filed by petitioner in No. 596 of the docket of this term.

DURANT & HORNOR,
Of Counsel for Petitioner.

APRIL 20, 1874.